

(1986) 09 CAL CK 0018

Calcutta High Court

Case No: Criminal Rev. No. 1702 of 1981

Chinmoy Saha and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Sept. 22, 1986**Acts Referred:**

- Essential Commodities Act, 1955 - Section 5, 7(l)(a), 7(l)(a)(ii)

Citation: 91 CWN 779**Hon'ble Judges:** S.P. Das Ghosh, J**Bench:** Single Bench**Advocate:** Biman Kanti Basu and A.N. Banerjee, for the Appellant; P.K. Roy, for the Respondent**Final Decision:** Allowed

Judgement

S.P. Das Ghosh, J.

This Rule has been issued for quashing the proceedings in a case, being G.R.E. 485 of 1979 (T. 831 of 1980) in the Court of the Judicial Magistrate, 1st Court, Barrackpore. It appears that at about 8.45 A.M. on 8th October, 1979 there was a raid on a gool manufacturing factory styled as Ma Bagala Fuel Manufacturing Company at 69 A, Mondal Para Lane, Sinthy, Calcutta 50 by some officers of the Enforcement Branch. The accused petitioner No. 1, the proprietor of the company, was then present. The accused petitioner No. 2 was present at the place. In his presence 1 ton coal dust, 1-1/2 ton "gool" prepared from coal dust and one trade licence No. 730 dated 8.1.79 issued by Baranagore Municipality were seized by the officers of the Enforcement Branch as there was no display of the stock and the rate board in the premises and as the petitioner No. 2 could not show any licence for selling "gool". Ultimately, charge-sheet was filed in the case and a charge was framed by the learned Judicial Magistrate, 1st class, 1st Court, Barrackpore on 17.6.81 against both the petitioners u/s 7(l)(a)(ii) of the Essential Commodities Act, 1955 for violation of paragraph 4 of the West Bengal Soft Coke Licensing Order,

1965 (hereinafter referred to as the Order of 1965) and paragraph 3(2) of the West Bengal Declaration of Stocks and Prices of Essential Commodities Order, 1977 (stated shortly as Order of 1977). The charge was to the effect that on 8.10.79 at Ma Bagala Fuel Manufacturing Company at 69 A, Mondai Para Lane, P.S. Baranagore, the petitioner No. 1 an owner and the petitioner No. 2 as employee of the shop exhibited "gool", prepared by dust and soft coke, without licence and without keeping accounts and without displaying the stock and rate board, thus violating paragraph 4 of the Order of 1965 and paragraph 3(2) of the Order of 1977 and thereby committed an offence punishable u/s 7(l)(a)(ii) of the Essential Commodities Act of 1955. The present revisional application has been filed for quashing the criminal proceeding on this charge against the two petitioners.

2. After hearing Mr. Basu, learned Advocate for the accused-petitioners, and Mr. Roy, learned Advocate for the State, I am of the opinion that the proceedings in the case No. G.R.E. 485 of 1979 should be quashed for the following reasons :

First, there is no question of violation of paragraph 3(2) of the Order of 1977. The Order of 1977 was passed by the West Bengal Government in accordance with a Notification issued by the Government of India, Ministry of Agriculture (Department of Food), bearing Order No. G.S. R. 316(E) dated 20.6.72 by virtue of which power was delegated to the State Government u/s 5 of the Essential Commodities Act, 1955 for passing the Order of 1977. It has been held by a Division Bench of this Court in the case of A. K. Jain v. State of West Bengal (87 C.W.N. 975) that the notification dated 20.6.72 only empowers the State Government to make orders to provide for matters in relation to food-stuff and as such the Order of 1977 could not be pressed in relation to soft coke or other types of coal which were surely not food-stuff. In the present case, we are concerned with "gool" or briquettes which are not also food-stuff. As "gool" is not a food-stuff, there is no violation of the Order of 1977.

3. Secondly, under paragraph 4 of the Order of 1965 no person would sell soft coke or carry on trade in soft coke unless he was in possession of a valid license under paragraph 6 of the order of 1965 and except in accordance with the conditions specified in such licence. The words "soft coke" includes "gool" under para 3(a) of the Order of 1965. The F.I.R. in the case shows that the petitioner No. 2 exhibited at about 8-45 A.M. on 8.10.79 "gool" prepared by dust of soft coke in the premises No. 69 A, Mondal Para Lane, without displaying stock and rate boards. The charge framed in the case is also for exhibiting "gool" prepared by dust and soft coke without licence and without keeping accounts and without displaying the stock and rate board. There is no material on record so far to show that the petitioners Nos. 1 and 2 sold "gool" or carried on trade in "gool". The word "dealer" defined in paragraph 3(d) of the Order of 1965, means a person who has been granted a licence under the provisions of paragraph 6(1) of that Order of 1965 authorising him to carry on trade in soft coke as a dealer for selling soft coke to a consumer or other dealer duly licensed. The upshot of this definition of the term "dealer" in paragraph

3(d) of the Order read with the provisions of paragraph 4 of the Order of 1965 is that the petitioners Nos. 1 and 2 could be roped in provided they sold "gool" or carried on trade in "gool" without licence. In the absence of any material on record so far to show that any of the petitioners Nos. 1 and 2 sold "gool" or carried on trade in "gool" at about 8-45 A.M. on 8.10.79 there can be no violation of paragraph 4 of the Order of 1965 by any of the petitioners Nos. 1 and 2 when there is no violation of the Order of 1977.

4. As there has been no violation of paragraph 3(2) of the Order of 1977 or paragraph 4 of the Order of 1965, the revisional application is to be allowed. The revisional application is, accordingly, allowed. The charge framed in the Case No. G.R.E. 485 of 1979 is set aside and the proceedings in the Case No. G.R.E. 485 of 1979 in the court of the Judicial Magistrate, 1st court, Barrackpore, 24-Parganas, against petitioners Nos. 1 and 2 are quashed. The Rule is accordingly, made absolute.

Let the Lower Court record be sent down.